AFR

(32)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 3457 of 2004

Petitioner — Naresh Kumar Patel S/o Late Bhagat Ram Patel Aged about 24 years R/o- Village-Raighata, Thesil-Kharsia Distt. Raigarh (C.G.)

Versus

Respondents

1. Union of India, Through; its Secretary, Department of Personnel, New Delhi.
2. State of Chhattisgarh Through its Secretary, Department of Forest, D.K.S. Bhawan, Raipur (C.G.)
3. State of Madhya Pradesh Through its Secretary, Department of Forest, Ballav Bhawan, Bhopal (M.P.)
4. Chief Conservator Of Forest Bilaspur Division (C.G.)
5. District Forest Officer Raigarh (C.G.)

Single Bench: Hon'ble Mr. Justice Satish K. Agnihotri.

Present: Mr. Sankalp Jaiswal, Advocate for the petitioner.
Mr. Sushil Dubey, Government Advocate for the State/ respondent No. 2 to 5.

ORDER

(Passed on 14th Day of March, 2007)

The following order of the Court was passed by Satish K. Agnihotri, J.

1. Learned counsel appearing for the petitioner submits that the father of the petitioner, namely, Shri Bhagat Ram Patel while working as Forest Guard, died on 5-4-1983 in harness.

(39)

2. The petitioner made an application on attaining the age of majority on 16.3.1999, for appointment on compassionate ground. Thereafter, according to the learned counsel appearing for petitioner, several representations were made. In this petition, the petitioner is seeking appointment on compassionate basis.

3.. The Hon'ble Supreme Court, in the case of ***Commissioner of Public Instructions and others*** **vs.** ***K.R. Vishwanath***[1], while dealing with the question of the object of the compassionate appointment, observed as under :-

> "9. As was observed in *State of Haryana* v. *Rani Devi*[1], it need not be pointed out that the claim of person concerned for appointment on compassionate ground is based on the premises that he was dependant on the deceased employee. Strictly this claim cannot be upheld on the touchstone of Articles 14 or 16 of the Constitution. However, such claim is considered as reasonable and permissible on the basis of sudden crisis occurring in the family of such employee who has served the State and dies while in service. That is why it is necessary for the authorities to frame rules, regulations or to issue such administrative orders which can stand the test of Articles 14 and 16. Appointment on compassionate ground cannot be claimed as a matter of right. Die-in-harness scheme cannot be made applicable to all types of posts irrespective of the nature of service rendered by the deceased employee. In *Rani Devi case*[1] it was held that scheme regarding appointment on compassionate ground if extended to all types of casual or ad hoc employees including those who worked as apprentices cannot be justified on constitutional grounds. In *LIC of India* v. *Asha Ramchhandra*

Ambekar[2] it was pointed out that High Courts and Administrative Tribunals cannot confer benediction impelled by sympathetic considerations to make appointments on compassionate grounds when the regulations framed in respect thereof do not cover and contemplates such appointments. It was noted in *Umesh Kumar Nagpal* v. *State of Haryana*[3] that as a rule in public service appointment should be made strictly on the basis of open invitation of applications and merit. The appointment on compassionate ground is not another source of recruitment but merely an exception to the aforesaid requirement taking into consideration the fact of the death of employee while in service leaving his family without any means of livelihood. In such cases the object is to enable the family to get over sudden financial crisis. But such appointments on compassionate ground have to be made in accordance with the rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased."

"10. In *Sushma Gosain* v. *Union of India*[4] it was observed that in all claims of appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread-earner in the family. Such appointments should, therefore, be provided immediately to redeem the family in distress. The fact that the ward was a minor at the time of death of his father is no ground, unless the scheme itself envisage specifically otherwise, to state that as and when such minor becomes a major he can be appointed without any time consciousness or limit. The above view was reiterated in *Phoolwati* v. *Union of India*[5] and *Union of India* v. *Bhagwan Singh*[6]. In *Director of Education (Secondary)* v. *Pushpendra*

Kumar[2], it was observed that in matter of compassionate appointment there cannot be insistence for a particular post. Out of purely humanitarian consideration and having regard to the fact that unless some source of livelihood is provided the family would not be able to make both ends meet, provisions are made for giving appointment to one of the dependants of the deceased who may be eligible for appointment. Care has, however, to be taken that provision for ground of compassionate employment which is in the nature of an exception to the general provisions does not unduly interfere with the right of those other persons who are eligible for appointment to seek appointment against the post which would have been available, but for the provision enabling appointment being made on compassionate grounds of the dependant of the deceased employee. As it is in the nature of exception to the general provisions it cannot substitute the provision to which it is an exception and thereby nullify the main provision by taking away completely the right conferred by the main provision."

4. It is well settled that the appointment on compassionate ground is not a method of recruitment, but, is a facility to provide for immediate rehabilitation of the family in distress for relieving the dependent family members of the deceased employee from destitution. In other words, the object of compassionate appointment is to enable penurious family to tide over the sudden financial crisis and is not to provide employment. It is also well settled that mere death of the employee does not entitle his family to claim compassionate appointment if the family members could sustain themselves financially from other sources of income.

5. The Supreme Court, in ***State of J & K and others*** **vs.** ***Sajad Ahmed Mir***[2], after having considered all the aspects of compassionate appointment, observed as under :-

> "11. ..... it is that such an appointment is an exception to the general rule. Normally, an employment in the Government or other public sectors should be open to all eligible candidates who can come forward to apply and compete with each other. It is in consonance with Article 14 of the Constitution. On the basis of competitive merits, an appointment should be made to public office. This general rule should not be departed from except where compelling circumstances demand, such as, death of the sole breadwinner and likelihood of the family suffering because of the setback. Once it is proved that in spite of the death of the breadwinner, the family survived and substantial period is over, there is no necessity to say "goodbye" to the normal rule of appointment and to show favour to one at the cost of the interests of several others ignoring the mandate of Article 14 of the Constitution."

6. Applying the settled principle of law as enunciated by the Hon'ble Supreme Court in various cases (Supra), to the facts of the present case, it is clear that the dependent members of the deceased had maintained itself for such a long period about 23 years without any regular source of income and without any financial assistance on the death of the breadwinner. At this stage, there is no necessity to take recourse to exceptional method of recruitment i.e. contrary to the normal rule of appointment at the cost of interest of several

other persons on the touchstone of Articles 14 or 16 of the Constitution.

7. In view of the foregoing, this petition is devoid of merit and accordingly dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

1 (2005) 7 SCC 206
2 (2006) 5 SCC 766

Subhash